

**Minutes  
Bar Harbor Planning Board  
June 17, 2009  
Council Chambers – Municipal Building  
93 Cottage Street**

**I. CALL TO ORDER — 6:03 p.m.**

*Members Present: Kay Stevens-Rosa, Kevin Cochary, Lynne Williams, Buck Jardine. Also present: Anne Krieg, Planning Director; Brian Madigan, Staff Planner*

**II. EXCUSED ABSENCES**

*Mr. Cochary moved to excuse Mr. Bowden. Mr. Jardine seconded the motion. The Board voted unanimously to approve the motion.*

**III. ADOPTION OF THE AGENDA**

Ms. Krieg noted that the agenda should be changed to reflect that both projects are being reviewed for public hearing this evening.

*Mr. Cochary moved to approve the agenda with the changes noted. Ms. Williams seconded the motion. The Board voted unanimously to approve the motion.*

**IV. APPROVAL OF MINUTES**

Ms. Stevens-Rosa asked if the Board had any questions or comments regarding the June 3, 2009 meeting minutes. Mr. Cochary asked if the minutes should be amended to reflect that a public hearing was scheduled for the Jackson Lab Importation and Isolation Facility for the June 17<sup>th</sup> Meeting. Mr. Cochary noted that the record should reflect that tonight's meeting was scheduled as a public hearing for the Jackson Lab Importation and Isolation Facility proposal.

*Mr. Cochary moved to adopt the agenda with noted changes. Ms. Williams seconded this motion, and the Board voted unanimously to approve this motion.*

**V. REGULAR BUSINESS**

**A. Public Hearing – SP-09-02 – West Street Hotel**

**Project Location:** West Street, Bar Harbor Tax Map 104, Lots 113-118, 122, 123, 143, 144, 146, 147, 149

**Applicant:** North South Construction Inc.

**Application:** Hotel and Accessory Uses

Mr. Salvatore presented changes made to date, and some of the benefits associated with the project. Mr. Salvatore stated that the project meets the height requirements of the current zoning district. Mr. Salvatore discussed accessory uses proposed within the project and noted the retail space would be independent and could operate autonomously if they so chose.

The applicant presented a Google Sketch-up 3D rendition of the proposed project. This model allowed the Board and members of the public to assess the project from various angles and to better understand how it would fit in with its surroundings.

Mr. Salvatore discussed the color scheme for the project.

Mr. Cochary asked if the 3D model showed the location of the parking deck. Ms. Krieg asked if a plan had been submitted for the parking deck. Mr. Moore noted this plan had been submitted with architectural plans in May.

Ms. Krieg noted that peer review of potential impacts to stormwater and public works facilities was ongoing. She recommended that the Board may proceed with their decision despite the fact that Department Capacity Statements had not been received and completed. Fees for third party review services were estimated at \$7,500.

Ms. Krieg reviewed the Staff Report.

Ms. Stevens-Rosa asked the Board if they had any individual comments to start discussion. Mr. Cochary noted that he felt the height of the building posed a serious issue, and expressed concern over the monotony of the roofline.

Mr. Jardine asked where the Whale Museum would be relocated. Mr. Salvatore responded that early plans indicated that it would be located in the hotel. However, these plans have since changed. He added the museum will be moved to another location. Mr. Jardine stated that the traffic study includes an exclusion for the Whale Museum. If this use is intended for another purpose, Mr. Jardine asked that the traffic study be revised to reflect the change in use from museum to commercial or hotel space.

Mr. Moore and Mr. Jardine discussed the need to amend the traffic study. Mr. Salvatore stated the traffic study only assessed the addition of hotel rooms and not the accessory uses.

Ms. Stevens-Rosa expressed concern with height and the monolithic nature of building. She then opened the discussion for public comment.

The public comment period began with comments from Stewart Brecher. Mr. Brecher noted that the project would present a significant visual impact to downtown Bar Harbor. He also noted that developing the back lot for shared parking would not provide sufficient benefit to the town. He stated that the development rights may better serve another purpose further down the line. Mr. Brecher also noted that the addition of rooms associated with this project would likely detract from other accommodations. He stated that he was concerned with the accuracy of the parking analysis prepared by the applicant, and asked that they remain consistent with intent of the ordinance. Finally, Mr. Brecher noted that the increase in height allowed in the ordinance was intended to increase accommodation for affordable housing, and not intended for general development to make more use out of their property.

Mr. David Witham expressed concern with air rights over Lennox Place, the number of parking spaces that could be allowed due to waivers, and the height of the building.

Ed Bearer spoke as Mr. Witham's attorney. He expressed concern with height, parking, and the need for the 3<sup>rd</sup> party oversight during the construction process. Mr. Bearer also stated that he believe tonight's meeting was for completeness review, not for public review, as indicated on Agenda on Town website.

Ms. Williams and Mr. Brecher discussed interpretations of setback requirements and their relation to height.

Ms. Rosa noted there are ongoing staff investigations on parking history and infrastructure.

Mr. Cochary noted that Board is not ready to get into details of parking. He also noted that the parking garage proposed in conjunction with the Town is not part of this project.

Mr. Witham noted 89 spaces on site. He asked why the other 31 spots would be waived. He noted that the applicant was putting in green space for a parking waiver and that the ordinance shouldn't apply for property that abuts landowners other property.

Mr. Moore stated that green space along the front of property meets the ordinance requirement for a waiver. Mr. Witham noted that the 14 space credit should not be allowed. He also noted that no plans were yet submitted for the parking lot.

Ms. Stevens Rosa asked that the Town attorney be present at the next hearing. Ms. Kreig concurred, and stated it would be appropriate to wait to review the height issue until the Town Attorney was present.

Mr. Moore noted that the parking credits applied for are lawful under Town Ordinance section 125.67 B4B. Mr. Moore read the ordinance and definition of a front yard. He noted that wherever there is a street there is front lot line. The applicant stated that the only side lot line is against the Criterion.

Mr. Brecher asked if the ordinance made a distinction between intent and purpose. He stated that the ordinance was intended to create green space not to avoid parking spaces.

Mr. Cochary and the applicant discussed access and right of way easements on Lennox Place and York Street.

Rob Jordan noted that a precedent was set when a builder wanted to connect two parcels over a R/W and noted that it is illegal to build over a R/W because this infringes on owners air rights. Mr. Jordan also expressed concern with the height of vehicles able to pass through.

Mr. Cochary noted again that he would like the Town attorney present to discuss height and easement issues.

***Mr. Cochary moved to continue the public hearing to July 1<sup>st</sup> Board meeting. Mr. Jardine seconded the motion. The Board voted unanimously to approve the motion.***

**B. Public Hearing – SP-09-04 – Jackson Laboratory**

**Project Location:** Schooner Head Road, Bar Harbor Tax Map 253 Lot 03

**Applicant:** The Jackson Laboratory

**Application:** New building approximately 20,000 SF

Ms. Stevens Rosa stated that the Board needed to determine if she might have a conflict of interest because a noticed abutter is her client. She asked the Board to decide if they believed her vote on this project was a conflict of interest.

Mr. Cochary opened this discussion to the Board. Ms. Williams stated traffic generation would not change from current status. Mr. Cochary added that there would be no change in the hours the traffic traveled. Ms. Williams concurred.

***Mr. Jardine moved that Ms. Rosa not recues herself from the vote. Ms Williams seconded the motion. The Board voted unanimously to approve the motion.***

The applicant gave an overview of the project.

Mr. Cochary noted color changes to the proposed pallet. Applicant noted that color generation from computer distorted the true color. The applicant discussed color details in greater depth.

Mr. Cochary also asked the applicant to discuss changes in impervious surface. Applicant noted that there would actually be a decrease in impervious area due to the decrease in the parking area. Mr. Jardine asked for square footage for this reduction. The applicant stated that she had no number on hand.

Ms. Krieg stated that Capacity Statements had been submitted to various Town departments for their endorsement. To date, none of these signed statements had been received yet, except for Police Department.

Mr. Cochary and Jardine discussed the merits of continuing the meeting due to the discrepancy in the Agenda which stated that the evenings Board Meeting was to discuss completeness and not compliance. Ms. Krieg stated only discrepancy was on the website and that public notice in the paper and to abutters had been met. The Board agreed that they were amicable with making a decision this evening.

Ms. Stevens-Rosa asked about plans for employee parking and the number of trucks entering the site. The applicant noted there was no designated parking at the lab and that Fed-Ex type trucks most frequently visited the site. Mr. Jardine asked if 18-Wheel trucks ever made deliveries off Schooner Head Road. The Applicant noted that liquid

nitrogen is the only delivery which requires an 18-wheeler and that the new building would not add to the number of trips made by such trucks.

Ms. Stevens-Rosa asked if there were any additional questions from the Board. Ms. Stevens-Rosa then opened the hearing for public comment. There were no comments from public. Ms. Stevens-Rosa then closed the public comment portion of the hearing.

Ms. Krieg noted that the Compliance Statements needed to be obtained from Public Works, Fire and Water Departments. Mr. Madigan confirmed that verbal confirmation had been received from the Water Department and that the only signature received to date was from Police. Ms. Krieg noted that all sign offs need to be completed prior to issuance of building permit.

***Mr. Cochary moved to approve the project. Ms. Williams seconded the motion. The Board voted unanimously to approve the motion.***

## **VI. OTHER BUSINESS**

### **A. Continuation of discussion on the Town Hill mini-plan**

Ms. Krieg stated that the Town Council voted to continue work on the Mini Plan and delayed the vote until June 2010. However, she noted that the Council did approve the vote to allow Design Review Board to have purview over projects in Town Hill. Ms. Krieg also stated that the 2007 Comprehensive Plan articulated that residents of Town Hill wanted small scale development and that no discussion at that time suggested differently. She cautioned the Board in how they would interpret the results of the moratorium. She noted that simply because the moratorium did not pass, this does not mean residents are in favor of large scale development. She also stated that she would like to attend the next Town Council meeting with a process and schedule in hand for moving forward with this issue.

Mr. Cochary asked what the dividing line of Town Hill should be, and if the jurisdiction of the Mini Plan could be widened. Ms. Krieg discussed the merits of expanding the jurisdiction of the Mini Plan.

Ms. Stevens-Rosa stated that there was a need to pick up with a directive for the Comprehensive Plan. She noted that the area around Red Rock Corner should be included in the Mini Plan.

Ms. Krieg stated that there was a need to update the land use ordinance to match the Comprehensive Plan because when the ordinance and Comp Plan do not match, the Town may be vulnerable.

Ms. Krieg stated that she will write something up for the next meeting and present it to the Board for their review.

### **B. LUO Amendments:**

- Wind Turbines

Ms. Krieg stated Council wants the ordinance amended for towers to allow guy wires. The Board asked for clarification on the reasoning behind this decision.

Ruth Eveland, a member of the Council, noted that the Council wanted guy wires allowed for residents who wished to make their own turbine

Mr. Cochary noted that making a wind tower by oneself invites failure. Board discussed problems with making homemade turbines. They noted that the ordinance states a turbine needs to be certified by an engineer.

Ms. Williams stated she does not support guy wires for those below 40'. Mr. Cochary stated that a soundly engineered system is critical, and that this must be proved. The Board discussed setbacks for those constructed by hand so that a faulty turbine does not negatively impact an abutter's property.

The Board noted that wind turbines need to be properly engineered. Mr. Cochary stated that wind turbines need to be professionally constructed; if not then they should meet some sort of design standard.

***Mr. Cochary moved to require that wind turbines be professionally engineered and installed, or if they are not they need to meet standards for tower of that height and design. Mr. Jardine seconded the motion. The Board voted unanimously to approve the motion.***

The Board discussed the guy wire issue, and stated that if professionally engineered the turbine probably doesn't need a guy wire.

Ms. Krieg stated she would do two orders for this motion. The first would be the Planning Board's motion, the second the Council's motion.

***Mr. Jardine moved that no guy wires be allowed because professionally engineered standards would cover stability issues. Mr. Jardine added the reason for this is to protect both humans and animals from injury. Ms. Williams seconded the motion. The Board voted unanimously to approve the motion.***

- Traffic Ordinance

Ms. Krieg noted that the Council asked this ordinance recognize peak season impacts. Mr. Cochary asked if the ordinance would require the Applicant to complete a traffic study ahead of peak season. Ms Rosa asked if traffic models account for pedestrian traffic. Ms. Krieg stated she would look into this matter.

Ms. Kreig asked that the Board wait for the July 1<sup>st</sup> Board Meeting to vote on this ordinance.

- Stormwater  
Ms. Krieg stated this ordinance was forwarded by Council with no changes.
- Shoreland  
*Ms. Williams moved that shoreland amendments go to November Town meeting. Mr. Cochary seconded the motion. The Board voted unanimously to approve this motion.*
- Design Review Board Jurisdiction in Town Hill  
Ms. Krieg restated that this will be voted on for Fall Town Meeting
- Town Hill Village  
Ms. Williams moved to approve the Town Hill Village. Mr. Cochary seconded this motion. The Board voted unanimously to approve the motion.

B. Possible Endorsement of Tarasov Subdivision – The Board endorsed this plan.

## **VII. PLANNING DIRECTOR'S REPORT**

No Report

## **VIII. BOARD MEMBER COMMENTS AND SUGGESTIONS FOR THE NEXT AGENDA**

Mr. Cochary commented on two things. First, he stated that submissions of documents at the hearing are difficult to digest and felt that the Board should accept these documents but not utilize them in the discussion for that days meeting. Mr. Cochary recommended that if a decision hinges on the submittal the document just submitted, the Board should wait until the next meeting to make a decision. The Board concurred.

Ms. Krieg stated she could add rules of procedure for them to consider. She also stated that she would include the rules of procedure in the next packet. Ms. Williams stated the applicant needs to know that no decision will be made that day.

Mr. Cochary also stated that he had a question regarding the Towns opinion on the need for a second means of egress. He discussed the purpose of this restriction. He suggested the Town consider a revision to the language in this ordinance so that when deciding on application they have basis to make a decision. Ms. Krieg stated she will put this on July 1<sup>st</sup> meeting.

## **IX. ADJOURNMENT**

*Ms. Williams moved to adjourn the meeting. Mr. Jardine seconded the motion. The Board voted unanimously to approve the motion.*

Minutes prepared by Staff Planner Brian Madigan for Planning Board Review at their  
July 1, 2009 meeting

*Signed as approved:*

---

Lynne Williams, Secretary  
Planning Board, Town of Bar Harbor

Date